

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In Re:)
PHARMACEUTICAL INDUSTRY) CA No. 01-12257-PBS
AVERAGE WHOLESALE PRICE) MDL No. 1456
LITIGATION) Pages 1 - 59

HEARING

BEFORE THE HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

United States District Court
1 Courthouse Way, Courtroom 19
Boston, Massachusetts
August 27, 2007, 9:25 a.m.

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1 case that makes sense to try and vet some of these issues
2 through. I'm sure that's not a total shock to you.

3 Let me just say to plaintiffs, I know you want to
4 put three defendants up because you want to move this case.
5 It is too confusing. It was so confusing to me doing
6 Track One with all the different drugs, but Amgen has five
7 different drugs. It's just too confusing to a jury. We're
8 going to do one drug.

9 Now, as I understand it, you raised a Seventh
10 Amendment issue about trying -- are you part of that brief,
11 trying Classes 2 and 3 separately?

12 MR. MUEHLBERGER: That was Mr. Haviland's brief I
13 believe you're referring to from last Friday.

14 THE COURT: Somewhere along the line, Aventis
15 raised it that it was a Seventh Amendment claim.

16 MR. MUEHLBERGER: In our opposition to class
17 certification, we clearly argued, in the context of a jury
18 trial, one jury has to decide every issue. We can't have one
19 jury deciding one factual issue and then having a follow-up
20 jury determine some other issue related to --

21 THE COURT: It made me think about that. So you
22 would want all three together?

23 MR. MUEHLBERGER: Well, your Honor, let me back up
24 to make sure we're clear here. First, with respect to
25 Class 1, I think the parties agree that plaintiffs do not

1 MR. KOON: This group, or a significant portion of
2 it, will be bound for New York tomorrow to talk with
3 Professor Green about how we get going. We've got five dates
4 scheduled with Professor Green between now and the middle of
5 October. I think that everybody here takes the position we
6 do have an imminent trial date. We don't know if it's going
7 to be this fall, it's going to be this winter, but I don't
8 think the notion that the Court needs to set an unreasonable
9 schedule for us to be serious about settling the cases is
10 really the way to go.

11 THE COURT: Except, you know, past is future.
12 That's what happened to me in every single one of the
13 Track One cases, except Glaxo, in fairness, except Glaxo.

14 MR. KOON: Well, it may be that you and
15 Professor Green could talk after tomorrow, after the folks
16 are there.

17 THE COURT: That might make sense because I'm still
18 thinking -- I've got November open -- I'd like to try this
19 case in November. We're going to do either a flat-out 93A
20 trial, or we'll do a national trial. And if I do a national
21 trial, I have to do a jury trial. And so I need to start
22 thinking in a very serious way about groupings. And you
23 haven't had a chance yet to look at the groupings, so I'm
24 thinking that the group that should do that are the three
25 that are the only single-source ones, which are Amgen,

1 Aventis, and Watson. And I'm not sure I can try them all at
2 once, simply because I think it's confusing for a jury to
3 keep track of all of them.

4 MR. YOUNG: I certainly agree with a jury trial,
5 your Honor. Just to add to what Mr. Koon was saying, there
6 are a number of things, and we mentioned them last time, that
7 still haven't taken place. I mean, one of them now, I
8 gather, is that there was going to be some round of briefing
9 on some of these national issues to try and help inform the
10 Court on the Class 2 and Class 3 issues, which is going to
11 put off those decisions, the certification of those classes
12 and the notice issues.

13 THE COURT: Say it again. What do you mean?

14 MR. YOUNG: Well, as I understand what the Court
15 was saying, the Court is going to be looking for some
16 additional briefing from the parties on these issues relating
17 to a national class and which state law would or wouldn't
18 apply here.

19 THE COURT: Well, let me ask you this: If I tried
20 a case even to a jury under 93A, although I'm not required
21 to because Massachusetts law gives me the discretion to,
22 suppose I were to try it to a jury on 93A, wouldn't that, if
23 you lost, create some collateral estoppel effects if there
24 was an intent to deceive and a finding of unfairness, or
25 whatever? Wouldn't that create collateral estoppel effects